

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 438 19 87Bill H _____ S 102 Original bill & history ✓ cH. Committee on JudiciaryHearing Date(s) 3/10 ✓ c3/17 ✓ c3/23 ✓ c

_____ c

Date Out _____ c

② S. Committee on JudiciaryHearing Date(s) 1/19 _____ c

_____ c

_____ c

_____ c

② S. Committee on Agriculture

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SENATE FINAL STATUS

1/23 FISCAL NOTE RECEIVED
 1/27 HEARING
 2/07 COMMITTEE REPORT--BILL PASSED AS AMENDED 48 0
 2/11 2ND READING PASSED 50 0
 2/13 3RD READING PASSED

TRANSMITTED TO HOUSE
 2/18 REFERRED TO TAXATION
 3/03 HEARING
 4/07 COMMITTEE REPORT--BILL CONCURRED 82 10
 4/09 2ND READING CONCURRED 81 13
 4/10 3RD READING CONCURRED

RETURNED TO SENATE
 4/21 SIGNED BY PRESIDENT
 4/22 SIGNED BY SPEAKER

4/22 TRANSMITTED TO GOVERNOR
 4/23 SIGNED BY GOVERNOR
 CHAPTER NUMBER 585 EFFECTIVE DATE: 7/01/87

SB 101 INTRODUCED BY ABRAMS, FARRELL, TVEIT
 STAGGERED REGISTRATION FOR 3/4-TON TRUCKS
 BY REQUEST OF DEPARTMENT OF HIGHWAYS

1/14 INTRODUCED
 1/14 REFERRED TO HIGHWAYS & TRANSPORTATION
 1/15 FISCAL NOTE REQUESTED
 1/23 FISCAL NOTE RECEIVED
 DIED IN COMMITTEE

SB 102 INTRODUCED BY STORY, BOYLAN, GALT
 STATES HOW TO USE VOLUME OR FLOW RATE IN DEFINING AN
 ADJUDICATED WATER RIGHT

1/14 INTRODUCED
 1/14 REFERRED TO JUDICIARY
 1/15 REREFERRED TO AGRICULTURE, LIVESTOCK &
 IRRIGATION
 1/19 HEARING
 1/24 COMMITTEE REPORT--BILL PASSED AS AMENDED 50 0
 1/28 2ND READING PASSED 50 0
 1/30 3RD READING PASSED

TRANSMITTED TO HOUSE
 2/04 REFERRED TO JUDICIARY
 3/06 HEARING
 3/17 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/19 REREFERRED TO JUDICIARY
 3/23 COMMITTEE REPORT--BILL CONCURRED
 STATE OF INTENT ADOPTED 84 0
 3/27 2ND READING CONCURRED 92 0
 3/28 3RD READING CONCURRED

RETURNED TO SENATE WITH AMENDMENTS
 4/01 2ND READING AMENDMENTS CONCURRED 49 0
 STATEMENT OF INTENT CONCURRED
 4/02 3RD READING AMENDMENTS CONCURRED 49 0
 STATEMENT OF INTENT CONCURRED
 4/06 SIGNED BY PRESIDENT
 4/07 SIGNED BY SPEAKER

4/07 TRANSMITTED TO GOVERNOR
 4/09 SIGNED BY GOVERNOR

SENATE FINAL STATUS

CHAPTER NUMBER 438 EFFECTIVE DATE: 4/09/87

SB 103 INTRODUCED BY HAGER, HARP
 REVISE THE METHOD FOR PAYMENT OF THE STANDARD
 PREVAILING WAGE WHEN EMPLOYER IS NOT A PARTY
 TO A COLLECTIVE BARGAINING AGREEMENT

1/14 INTRODUCED
 1/14 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 1/14 FISCAL NOTE REQUESTED
 1/15 FISCAL NOTE RECEIVED
 1/22 HEARING
 1/29 FISCAL NOTE REQUESTED
 2/09 FISCAL NOTE RECEIVED
 2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED 48 1
 2/20 2ND READING PASSED 44 6
 2/23 3RD READING PASSED

TRANSMITTED TO HOUSE
 2/24 REFERRED TO BUSINESS & LABOR
 3/11 HEARING
 3/12 COMMITTEE REPORT--BILL CONCURRED
 3/14 2ND READING CONCURRED 61 39
 3/14 REREFERRED TO APPROPRIATIONS
 3/16 TAKEN FROM COMMITTEE
 AND PLACED ON 3RD READING
 3/17 3RD READING CONCURRED 70 23

RETURNED TO SENATE
 3/20 SIGNED BY PRESIDENT
 3/21 SIGNED BY SPEAKER

3/21 TRANSMITTED TO GOVERNOR

3/26 RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS
 3/30 REREFERRED TO RULES
 4/02 COMMITTEE REPORT RULED
 GOVERNOR'S AMENDMENTS GERMANE TO BILL
 4/06 REREFERRED TO RULES
 4/07 COMMITTEE REPORT RULED AMENDMENTS MAY NOT
 BE OFFERED ON GOVERNOR'S AMENDMENTS
 4/08 2ND READING GOVERNOR'S AMENDMENTS 25 25
 CONCUR MOTION FAILED
 4/08 2ND READING GOVERNOR'S AMENDMENTS NOT 24 26
 CONCUR MOTION FAILED
 4/09 2ND READING GOVERNOR'S AMENDMENTS 23 27
 CONCUR MOTION FAILED
 4/09 2ND READING GOVERNOR'S AMENDMENTS 27 23
 NOT CONCURRED

TRANSMITTED TO HOUSE
 4/15 2ND READING GOVERNOR'S AMENDMENTS 97 2
 CONCURRED
 4/16 3RD READING GOVERNOR'S AMENDMENTS 96 1
 CONCURRED

RETURNED TO SENATE
 4/22 FREE CONFERENCE COMMITTEE APPOINTED
 4/23 FREE CONFERENCE COMMITTEE REPORT
 4/23 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 34 15
 4/23 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 32 18

SENATE BILL NO. 102

INTRODUCED BY STORY, BOYLAN, GALT

IN THE SENATE

JANUARY 14, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 15, 1987	ON MOTION, REREFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.
JANUARY 24, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 26, 1987	PRINTING REPORT.
JANUARY 28, 1987	SECOND READING, DO PASS.
JANUARY 29, 1987	ENGROSSING REPORT.
JANUARY 30, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 17, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1987	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
MARCH 27, 1987	SECOND READING, CONCURRED IN.

MARCH 28, 1987

THIRD READING, CONCURRED IN.
AYES, 92; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS
AND STATEMENT OF INTENT.

IN THE SENATE

APRIL 1, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 2, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 Senate BILL NO. 102
2 INTRODUCED BY Steve Doyle
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING HOW VOLUME
5 AND FLOW RATE ARE TO BE USED IN A FINAL DECREE CONCERNING
6 ADJUDICATED WATER RIGHTS; AND AMENDING SECTION 85-2-234,
7 MCA."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 85-2-234, MCA, is amended to read:

11 "85-2-234. Final decree. (1) The water judge shall, on
12 the basis of the preliminary decree and on the basis of any
13 hearing that may have been held, enter a final decree
14 affirming or modifying the preliminary decree. If no
15 request for a hearing is filed within the time allowed, the
16 preliminary decree automatically becomes final, and the
17 water judge shall enter it as the final decree.

18 (2) The terms of a compact negotiated and ratified
19 under 85-2-702 must be included in the final decree without
20 alteration unless an objection is sustained pursuant to
21 85-2-233; provided that the court may not alter or amend any
22 of the terms of a compact except with the prior written
23 consent of the parties in accordance with applicable law.

24 (3) The final decree shall establish the existing
25 rights and priorities within the water judge's jurisdiction

1 of persons required by 85-2-221 to file a claim for an
2 existing right, of persons required to file a declaration of
3 existing rights in the Powder River Basin pursuant to an
4 order of the department or a district court issued under
5 sections 8 and 9 of Chapter 452, Laws of 1973, and of any
6 federal agency or Indian tribe possessing water rights
7 arising under federal law, required by 85-2-702 to file
8 claims.

9 (4) The final decree shall state the findings of fact,
10 along with any conclusions of law, upon which the existing
11 rights and priorities of each person, federal agency, and
12 Indian tribe named in the decree are based.

13 (5) For each person who is found to have an existing
14 right arising under the laws of the state of Montana, the
15 final decree shall state:

16 (a) the name and post-office address of the owner of
17 the right;

18 (b) the amount of water, ~~rate, and volume,~~ included in
19 the right, measured as follows:

20 (i) by flow rate for direct flow rights, such as
21 irrigation rights, that have historically been measured by
22 flow rate;

23 (ii) by volume for rights, such as reservoir storage
24 rights, that have historically been measured by volume; or

25 (iii) by flow rate and volume for rights that have

1 historically been measured by both flow rate and volume;
2 (c) the date of priority of the right;
3 (d) the purpose for which the water included in the
4 right is used;
5 (e) the place of use and a description of the land, if
6 any, to which the right is appurtenant;
7 (f) the source of the water included in the right;
8 (g) the place and means of diversion;
9 (h) the inclusive dates during which the water is used
10 each year;
11 (i) any other information necessary to fully define
12 the nature and extent of the right.
13 (6) For each person, tribe, or federal agency
14 possessing water rights arising under the laws of the United
15 States, the final decree shall state:
16 (a) the name and mailing address of the holder of the
17 right;
18 (b) the source or sources of water included in the
19 right;
20 (c) the quantity of water included in the right;
21 (d) the date of priority of the right;
22 (e) the purpose for which the water included in the
23 right is currently used, if at all;
24 (f) the place of use and a description of the land, if
25 any, to which the right is appurtenant;

1 (g) the place and means of diversion, if any; and
2 (h) any other information necessary to fully define
3 the nature and extent of the right, including the terms of
4 any compacts negotiated and ratified under 85-2-702."

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 17,

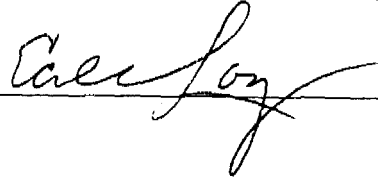
1987

Mr. Speaker: We, the committee on JUDICIARYreport SENATE BILL NO. 102

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached



Chairman

1. Title, line 7.

Following: "PROVIDING"Insert: "A RETROACTIVE APPLICABILITY DATE AND"

2. Page 2, line 19.

Strike: "measured"

3. Page 2, lines 21 and 22.

Strike: " , that " on line 21 through "rate" on line 22

4. Page 2, line 23.

Following: "as"Insert: "stockpond and"

5. Page 2, line 24.

Strike: "that have historically been measured by volume"Insert: "and for rights that are not susceptible to measurement by flow rate"

6. Page 2, line 25 through line 1 on page 3.

Strike: "have" on page 2, line 25 through "volume" on line 1 of page 3Insert: "a water judge determines require both volume and flow rate to adequately administer the right"

7. Page 4, line 5.

Following: line 4

Insert: "NEW SECTION. Section 2. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all decrees issued by a water judge under Title 85, chapter 2, part 2, after April 30, 1982."

Renumber: subsequent section

ASB102/JM/JM2

THIRD

reading copy (BLUE)
color

REP. KELLER WILL CARRY THE BILL!

STANDING COMMITTEE REPORT

(75)

HOUSE

MARCH 23,

87
19

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 102

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☒ statement of intent attached

Earl Lay
Chairman

STATEMENT OF INTENT SENATE BILL NO. 102

The legislature intends that water rights should not be quantified in a temporary preliminary, preliminary, or final decree except as historically defined in Montana and except where a water judge determines that quantification of both volume and flow rate are required to adequately administer the right. For example, most irrigation water rights have been defined in Montana only by flow rate, reservoir rights have been commonly defined by volume, and hydropower rights have been defined by both flow rate and volume. The courts retain discretionary power to quantify water rights in terms of their historic definitions. It is the intent of the legislature that the water judges exercise their discretionary power on all existing and future decrees to reduce, to the extent possible, objections to water rights that have not historically been defined by volume.

~~100-22~~
~~100-22~~

3rd reading copy (BUE)
color

(KELLER)

Senate reconvened at 3:34 p.m.

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL (Galt, Chairman) 1/15/87
Correctly printed and placed on the members' desks: SB 40, SB 41, SB 57, SB 72, SB 78, SB 80, SB 83.
Correctly engrossed: SB 26, SJR 3.

Report adopted.

PUBLIC HEALTH, WELFARE, AND SAFETY (Eck, Chairman) 1/14/87
SB 18, do pass. Report adopted.
SJR 1, do pass. Report adopted.

STATE ADMINISTRATION (Haffey, Chairman) 1/15/87
HB 11, be concurred in. Report adopted.
HB 27, be concurred in. Report adopted.
HB 63, be concurred in. Report adopted.

Adverse Committee Report

STATE ADMINISTRATION (Haffey, Chairman) 1/14/87
SB 67, do not pass. Adverse Committee Report adopted as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Brown, Eck, Farrell, Galt, Haffey, Hager, Halligan, Himsl, Hirsch, Jacobson, Jergeson, Lybeck, Lynch, Manning, Mazurek, McLane, Meyer, Neuman, Pinsonneault, Rasmussen, Regan, Stimatz, Tveit, Van Valkenburg, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 36

Noes: Boylan, Crippen, Gage, Hammond, Harding, Hofman, Keating, McCallum, Severson, Smith, Story, Thayer, Vaughn.
Total 13

Excused: None.
Total 0

Absent or not voting: Kolstad.
Total 1

REPORTS OF SELECT COMMITTEES

Free Conference Committee
on House Bill No. 1
Report No. 1, January 15, 1987

Mr. President:

We, your Free Conference Committee on House Bill No. 1, met and considered:

Senate amendment to House Bill No. 1.

We recommend as follows:

That House Bill No. 1, reference copy, be amended as follows:

1. Page 2.
Following: line 2
Insert: "Revenue Oversight Tax Consultant \$18,000"

And that this Free Conference Committee Report be adopted.

For the Senate:

For the House:

Mazurek
McCallum

Donaldson
Ramirez
Williams

MOTIONS

Senator Halligan moved that SB 40 be taken from second reading on the 11th legislative day and that it be rereferred to the Committee on Judiciary. Motion carried unanimously.

Senator Story moved that SB 102 be taken from the Committee on Judiciary and that it be rereferred to the Committee on Agriculture, Livestock, and Irrigation. Motion carried unanimously.

Senator Walker moved that SB 93 be taken from Local Government and that it be rereferred to the Committee on State Administration. Motion carried unanimously.

Senator Van Valkenburg moved to temporarily suspend the temporary rules to print, place on members' desks, and place on second reading this legislative day the Free Conference Committee Report on HB 1. Motion carried unanimously.

FIRST READING OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 107, introduced by Farrell. Referred to Committee on Fish and Game.

SB 108, introduced by Bishop. Referred to Committee on Judiciary.

SB 109, introduced by Bishop, Whalen, Moore, E. Smith. Referred to Committee on Fish and Game.

SB 110, introduced by Thayer, Harper, Simon, Rasmussen, Van Valkenburg, Mazurek, C. Smith, Crippen, Vincent. Referred to Committee on Business and Industry.

SB 111, introduced by Halligan, Harp, Wallin, M. Williams, Jacobson, Eck, Gould, Gilbert, Bulger, Sands, Regan, Schye, Hager. Referred to Committee on Public Health, Welfare, and Safety.

SB 112, introduced by Mazurek (By Request of the Department of Administration). Referred to Committee on Judiciary.

SB 113, introduced by Gage. Referred to Committee on State Administration.

SB 114, introduced by Thayer, Compton (By Request of the Secretary of State). Referred to Committee on Judiciary.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Van Valkenburg moved that the Senate resolve itself into a Committee of the Whole, for the consideration of business on second reading. Motion carried. Senator Hager in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 47 - That SB 47 do pass. Motion carried as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsonneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story,

SENATE
AGRICULTURE, LIVESTOCK AND IRRIGATION
COMMITTEE

50th LEGISLATIVE SESSION

1987

COMMITTEE MEMBERS:

SENATOR PAUL F. BOYLAN, Chairman

SENATOR JACK GALT, Vice-Chairman

SENATOR HUBERT ABRAMS

SENATOR ESTHER BENGTSON

SENATOR TOM BECK

SENATOR GREG JERGESON

SENATOR ALLEN KOLSTAD

SENATOR RAY LYBECK

SENATOR PETE STORY

SENATOR GENE THAYER

LEGISLATIVE STAFF COUNCIL:

DAVID COGLEY

COMMITTEE SECRETARY;

RITA TENNESON

CHAIRMAN--SEN. PAUL BOYLAN
NORMAL SCHEDULE==> SITE: ROOM 413/415

DAYS: M-W-F

TIME: 1:00 P.M.

SECRETARY-RITA TENNESON

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0004	1/03	1/09	1/21	ADVERSE REPORT		1/23
THAYER, GENE			UCC FINANCING STATEMENT FOR FARM EQUIPMENT CONTAIN MODEL, SERIAL NUMBERS			
SB0046	1/07	1/19	1/21, 1/23	PASS AS AMENDED		1/21
NEUMAN, TED			EXTEND AGRICULTURAL LOAN LINKED DEPOSIT PROGRAM			
SB0102	1/15	1/19	1/21, 1/23	PASS AS AMENDED		1/21
STORY, PETER R.			STATES HOW TO USE VOLUME OR FLOW RATE IN DEFINING AN ADJUDICATED WATER RIGHT			
SB0142	1/19	1/28	2/06, 2-11, 2-16	TIE VOTE		2/16
WEEDING, CECIL			RIGHT OF FIRST REFUSAL ON SALE OF FORECLOSED AGRICULTURAL LAND			
SB0193	1/21	1/28		TABLED		1/30
BOYLAN, PAUL F.			BEEHIVE OWNERS MUST USE ELECTRIC FENCES BEFORE TAKING STOCK-KILLING WILDLIFE			
SB0207	1/24	2/02	2/04, 2/09	TABLED		2/09
LYBECK, RAY			MONTANA QUALITY LABEL AND CERTIFICATION (BEEF)			
SB0238	1/28	2/04		PASS AS AMENDED		2/04
BECK, TOM			VERTEBRATE PEST MANAGEMENT			
SB0268	2/02	2/13		ADVERSE REPORT		2/16
YELLOWTAIL JR, WILLIAM P.			PARTIAL REDEMPTION OF FORECLOSED AGRICULTURAL LAND			
SB0277	2/03	2/09	2/11	PASS AS AMENDED		2/16
HOFMAN, SAM			REVISION OF STATEWIDE MILK POOLING LAW			
SB0278	2/03	2/11		ADVERSE REPORT		2/16
WEEDING, CECIL			ADOPTS THE INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING			
SB0321	2/11	2/13		ADVERSE REPORT		2/16
JERGESON, GREG			PROVIDES FOR VOLUNTARY MEDIATION OF AGRICULTURAL INDEBTEDNESS			

ROLL CALL

AGRICULTURE

COMMITTEE

50th

LEGISLATIVE SESSION, 1987

MONTH JANUARY

DATE-----	9	19	21	23	28	30				
NAME:										
Senator Abrams	X	X	X	X	X	X				
Senator Bengtson	X	X	X	X	X	X				
Senator Beck	X	X	E	X	X	X				
Senator Jergeson	X	X	X	X	X	X				
Senator Kolstad	E	X	X	X	X	X				
Senator Lybeck	X	X	X	X	X	X				
Senator Story	E	X	X	E	X	X				
Senator Thayer	X	X	X	X	X	X				
Vice-Chairman										
Senator Galt	X	X	E	E	X	X				
Chairman										
Senator Boylan	X	X	X	X	X	X				

KEY: X--Present
A--Absent
E--Excused

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

January 19, 1987

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date in Room 415 of the State Capitol, at 1:00 p.m. by Chairman Boylan.

ROLL CALL: All members present.

CONSIDERATION OF SB 102: Senator Pete Story, SD 41, sponsor of the bill, said the purpose is to accomodate the last supreme court ruling and make the water do exactly what it should have done in the first place. The change in subsection 4 may need to be added in subsection (6), which refers to persons, tribes, and federal agencies. The old water law said to measure the amount of water, the rate and volume, included in the right. The new constitution guaranteed that all existing water rights would be protected. The bill to readjudicate those rights mentioned water rate volume. Volume was used in measuring water that went into reservoirs, however, water taken from streams for irrigation was only measured in flow rate. There was no practical way to measure volume because flow rate varies and time and use changes constantly.

An old right might say you are entitled to 100 miners inches, but it didn't say for how long. You were entitled to use it as long as it was beneficial, but you wouldn't use it all the time. Some rights dried up after runoff and you didn't use it when you were taking your crops off. When you talked about volume, you multiplied the days you used the water and got a volume for more than you ever used. You could use the flow right any time you wanted. This bill clarifies that, for irrigation rights, you measure by flow rate if it was historically a flow rate and by volume if it was historically a volume rate. Page 3, subsection 6, you could expand the language on line 20 and include the new measurement requirements. He stressed that it is difficult to measure volume because of inconsistent direction of water flow. He felt if you got rid of the volume requirements where it isn't pertinent to that right it would get rid of a lot of objections.

PROPOSERS: Senator Dorothy Eck, SD 40, said she had served on the water policy board and worked with EQC. Volume vs. flow rate has been before them a long time. She thought the supreme court had taken care of the problem when they declared flow rate was limited to beneficial use. She said one of the prime reasons for the adjudication process was to

be able to verify Montana claims with down stream states, tribes and federal agencies in regard to water rights. In order to do this you had to show how much water was being used. She agreed it was difficult to do and Senator Story's bill would help clarify this. She suggested an amendment that says "except as otherwise provided by law volume is not the legal measure of the water rights; but volume may be used by the Department for statistical purposes in performing its water determining functions in negotiating or litigating water rights, etc., with other states." She said she would get this amendment to the secretary at a later date as she wanted to check with Judge Lesley first.

Lorna Frank, MT Farm Bureau, supported the bill without amendments, because of problems they have had in the Flint Creek area. She will submit written testimony for this tomorrow. (testimony, exhibit #1)

Eugene Manley, Allendale Irrigation, Drummond, said the controversy over volume first arose in his basin. Addressing volume in water rights creates some real problems. In early spring when there is an excess amount of water, you do not use that available water so you don't have the necessary return flow at the end of the year. It will vary from year to year. In a good year you can use a lot of water while in a dry year you may use very little. Three fourth's of the objections in his basin were on volume. He said a flow rate and volume rate are compatible, you can have both in a basin. He was strongly opposed to a volume rate.

Carol Mosher, representing MT Stockgrowers and MT Cattle Women, in support of SB 102.

OPPONENTS: Gary Fritz, Dept. of Natural Resources, appeared as an opponent because legislative rules require people with amendments appear as opponents, he said. The Dept. accepted the concept of Senator Story's bill because it will be easier, simpler and more correct to identify irrigation direct flow rights only by flow right and not by volume. Putting volumes in these decrees has created many problems. Having only flow right in the decree doesn't mean that volume isn't part of the water rights. If someone 20 years from now changed his direct flow water rights and sells it to someone else or changes it to another place of use, it is necessary to have the volume flow associated with that water right so you will know he is not expanding his water right in some way to cover more acres and get more water. DNRC amendments (exhibit #2), concern the fact that a lot of the water rights in the state have not been measured. The amendments indicate how the water be measured in the final decree. He said these amendments make it very clear

that, in the final decree, the irrigation direct flow rights be adjudicated only by flow rights and not by volume. Some rights should be described by both flow rate and volume and they would give the water court that option.

Mike Zimmerman, attorney for MT Power Co., said he does not oppose the concept of the bill, but supports the DNRC amendments because the words, "historically have been measured" creates an ambiguity he would like cleared up pertaining to reservoir rights. Many of their reservoir rights have not been subject to decree in the past, nor have hydro electric reservoir rights. He wanted to be assured that when they go to the water court to make their case they will be able to show the right of both volume and flow so they are not limited through the legislation before the committee.

COMMITTEE QUESTIONS: Senator Bengtson asked if the flow rate necessitates metering all water used for irrigation. Senator Story said it does in situations where it affects another user. There are about 200,000 water rights and probably not an accurate measurement device for one in a hundred. Where there are ditch riders or water commissioners the streams have to have accurate measuring devices. Where the devices aren't in, if a neighbor thinks someone is using more water than he is entitled to and the neighbor also has a right on that stream, he can make him put in a measuring device.

Senator Thayer asked Senator Story to comment on the DNRC amendments. Senator Story said he would like to go over them with his attorney first. He had not heard of the term "water spreading".

Gary Fritz said water spreading was not defined in the statutes but it is a method of irrigation in southeastern Montana. People throw up dikes across small gullies and there is no way the water flowing into those dikes can be controlled. The water flows down the gullies and flows into the dikes and you couldn't determine a flow rate. Those types of dikes would have to be measured by volume.

Hearing closed on SB 102.

CONSIDERATION OF SB 46: Senator Ted Neuman, SD 21, said this bill reauthorizes the use of the link deposit program the legislature put into effect during the special session in March. Testimony attached as exhibit #3.

PROPOSERS: Mike Grove, Governor's Council on Economic Development, served as chairman of the Ag Debt Subcommittee.

DNRC
AMENDMENTS
TO SB 102 (INTRODUCED BILL)

1. Page 2, line 18 through line 1, page 3.

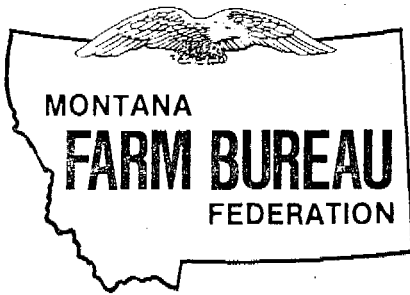
Strike: subsection (b) in its entirety.

Insert: "(b) the amount of water that has historically been put to beneficial use, measured as follows:

(i) by flow rate for direct flow rights, such as irrigation rights, except water spreading; or

(ii) by flow rate and volume to the extent that the information appears in or can be derived from the record before the water judge."

SENATE JOURNAL
EXHIBIT NO. 2
DATE 1-19-87
BILL NO. SB 102



P.O. Box 6400
~~502 South 10th~~

Bozeman, Montana 59715

Phone (406) 587-3153

TESTIMONY BY: Lorna Frank
BILL # S.B. 102 DATE 1/20/87
SUPPORT XXX OPPOSE

Mr. Chairman, members of the committee, for the record my name is Lorna Frank, representing Montana Farm Bureau.

Farm Bureau policy states that "we support legislation that would prohibit Water Courts from reducing the flowrate, volume or season of use of any legitimate water right that was used before 1973."

Senate Bill 102 would do just that by stating how the water in the right is to be measured. Historically is the key word, if the water has been historically measured by flow rate for rivers and streams or by volume for reservoirs that is the way it should be done.

Senate Bill 102 makes this clear and Farm Bureau would like to see this committee give Senator Story's bill a do pass recommendation. Thank you for considering our position on this bill.

SENATE AGRICULTURE
EXHIBIT NO. 1
DATE 1-19-87
BILL NO. SB102

SIGNED: Lorna Frank

===== FARMERS AND RANCHERS UNITED =====

ROLL CALL

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-19-87

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom	✓		
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.	✓		
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN	✓		
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

COMMITTEE ON

DATE

1-19-87

AGRICULTURE

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
Ralph Vaeger	Commerce GCEO	SB 46	✓	
Lorna Frank	Mont Farm Bureau	SB 102		
Carol Mosher	Mont. Dept of Ag	SB 46	✓	
Ralph Pick	Mont. Cattle Woman	SB 102	✓	
MIKE MURPHY	MT Dept of Ag	SB 46	✓	
Anne Moylan	"	SB 46	✓	
Fred Galtbort	Mont. Cath Conference	SB 46		
James R. Pinner	Board of Investments	SB 46		
Bob Pyfer	"	"		
Mike Zimmerman	Mont. Credit Unions League	46	✓	
Mike Cline	IMPCO	SB 102		
John Paddy	Gov. Council Econ. Dev.	SB 46	✓	
Debi Brammer	MT BANKERS ASSN	SB 46	✓	
Eugene Moulsey	MT Assn of Conservationists	SB 46 SB 102		
Kay Rosenberg	Allendale Irrigation	SB 102		
Young Mungton	WIFE	SB 46	✓	
Cardece Whit	MT Farmers Union	SB 46	✓	
Tom Hall	DRRC	SB 102		
Rick Meis	MT Environmental Info Ctr.	SB 102		
K.M. Kelly	MWDA	SB 101	✓	
Stuart Duggan	MT Chamber of Commerce	SB 46		

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
STATE CAPITOL BUILDING

January 23, 1987

The Agriculture, Livestock & Irrigation Committee meeting was called to order on the above date in Room 415 of the State Capitol at 1:10 p.m.

ROLL CALL: Senators Galt and Story excused, all other members present.

DISCUSSION ON SB 4: Dave Cogley reported he checked on Phil Johnson's concerns regarding how SB 4 differed from the uniform law. Uniform laws are promulgated by the National Conference of Commissioners on Uniform State Laws. Joe Mazurek and Diana Dowling were members of that commission. There is no requirement states adopt these laws verbatim. Mr. Johnson's concern is not a valid concern.

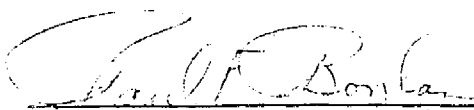
Senator Thayer had checked with Mr. Allen and decided maybe the bill wasn't really important now. After more experience with the system, he felt we can come back in two years and rewrite the bill if necessary.

DISPOSITION OF SB 4: Senator Bengtson moved SB 4 DO NOT PASS. Motion carried without a dissenting vote.

FINAL DISPOSITION OF SB 46 AND SB 102: Senator Beck voted yes that both bills pass as amended. Senator Galt will not be back until Tuesday, Senator Boylan told the committee. He asked committee approval on getting the bills out today and the committee agreed. The bills will be reported out.

In answer to Senator Beck's questions concerning SB 46 on the BD of Investment's interest rate, Dave Cogley stated that the BD of Investment had indicated to the interim committee they have in excess of 80 million dollars they can put out in CD's. The rate is determined by the board, not by the banks. The 1% is a deduction from that. It really isn't a loss to the state of more than 1%. The bank is able to charge 3 points above that rate in making the agricultural loan.

There being no further business, the meeting adjourned at 1:18 p.m.



PAUL F. BOYLAN, Chairman

ROLL CALLAGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-23-87

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom	✓		
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.			✓
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN			✓
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
1987

<u>Committee Members</u>	<u>District</u>
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
102		3/6/87									
104		3/12/87						3/13/87			
108		3/12/87							3/17/87		
112		3/5/87	3/5/87					3/5/87			
114		3/12/87						3/17/87			
119		3/9/87						3/10/87			
121		3/16/87						3/23/87			
134		3/6/87	3/6/87					3/6/87			
139		²⁰ 3/12/87	3/23/87							3/26/87	
144		3/4/87	3/5/87							3/5/87	
152		3/13/87						3/23/87			
160		3/13/87								3/23/87	
164		3/13/87						3/23/87			
173		3/13/87	tabled 3/23/87						reconsidered 3/27/87		

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 6, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 6, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Bulger and Rep. Hannah who were absent and Rep. Daily who was excused.

SENATE BILL NO. 134: Senator Beck, District No. 24, sponsor, stated this was a bill to make the crime of conveying a dangerous drug to a person, subject to official detention, a felony punishable by a prison term not to exceed ten years. He presented Mr. Chisolm of the Department of Institutions who spoke further on the bill.

Kurt Chisolm, Deputy Director of the Department of Institutions, explained it was the department's desire to make it a felony to smuggle a weapon into an inmate of the prison. They want to include the provision it is also a felony punishable by ten years in prison for smuggling a dangerous drug into the prison. Approximately 4 or 5 times a year, individuals are caught trying to transfer illegal soft drugs into the prison. A person convicted of the offense of unauthorized communication shall be fined not to exceed \$100.00 or imprisoned in the county jail for any term not to exceed 10 days, or both. This bill would help correct some of the major problems in the Montana prison system.

There were no further proponents, no opponents and no questions from the committee.

Senator Beck closed the hearing on Senate Bill No. 134.

SENATE BILL NO. 102: Senator Story, District No. 41, stated this was a short technical bill that was simple and straight forward. It was a correction to the water right laws passed recently. Where there are ditch rights, they are measured simply by flow rights. Reservoirs which have, historically, been measured by both flow and volume will still be measured by flow and volume. Other rights, such as water spread, are measured by volume. The reason for the amendment and the importance of it, was that most of the rights were for irrigating and were ditch rights. The new constitution guarantee the old rights which were measured in flow.

PROPOSERS: Phil Strobe, Attorney, representing the Sweet Grass Company Preservation Association, stated the bill would ease people's fears. The water court would be able to go on and there would be a quicker adjudication of the remaining rights. He urged passage of SB #102.

Eugene Manley, former chairman of the Granite County Water Users Association, and secretary to the Allendale Irrigation Company, represented the concerns of the water users in the Flint Creek Basin and what should be the concerns of the water users in Rock Creek Basin. He stated the bill attempted to address the problems with, and the removal from adjudication the necessity of the so called "volume caps". He submitted written testimony. (Exhibit A).

Carol Mosher, representing the Montana Cattle Women and the Montana Stockgrowers, stated they supported the bill because it helped to reaffirm that their rights are secure and being treated in the same way as they had historically been treated down through the years. She also asked the Farm Bureau Federation be added to the record in support of the bill.

Debra Brammer, representing the Montana Association of Conservation Districts, went on record in support of the bill.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 102: Rep. Cobb asked Senator Story how the department was now measuring the water. Senator Story stated they were not measuring them, they were objecting to them. They were objecting on the basis that the volume was far more than anyone needed. Water is never wasted, it is used in one right and then flows back into another stream and then is used in another right. He said there was no practical way of monitoring volume.

Rep. Grady noted there was nothing in the bill about miners inches. Senator Story said that miners inches and cubic feet per second were both measures of flow. All the old rights were in miners inches and this bill referred to flow rate. Rep. Grady asked Senator Story what effect this would have on the present adjudication system. Senator Story said the effect would be that they no longer would be asking ranchers to add volume as well as flow rate to their adjudication. Senator Story asked Mr. Strobe to answer the question. Mr. Strobe stated for 40 or 50 years in Montana history, one almost could not abandon a water right by non-use. Whatever was on paper would stand up in court

proceedings. Currently, a holder of a right must put the water to beneficial use.

Rep. Lory asked Senator Story, since 1973, one had to file on both flow and volume. Senator Story said if a new right were filed, as of 1977, it required filing on both flow and volume.

Senator Story closed the hearing on SB #102 by stating the bill was a necessary and good bill.

SENATE BILL NO. 225: Senator Halligan, District No. 29, stated the bill was a uniform act and dealt with marriage and dissolution and was a uniform premarital agreement act. This act is allowed under Montana statute presently but there were no guidelines set up. The uniform act was a tool for setting up a premarital agreement.

PROPOSERS: Bruce Barrett, Attorney for the University of Montana students, presented written testimony. (Exhibit A). He stated the major points of the act were that it allowed agreements which may be amended by parties during marriage. The act would require a judge to observe the agreements, which are difficult to overturn, and those who chose one would be given certainty and predictability.

Anne Hamilton, stated the premarital agreements were a good thing and it was good that the bill had flexibility to allow changes after marriage.

There were no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 225: Rep. Mercer asked Mr. Barrett about the new section on page three, regarding the unconscionable standard. Mr. Barrett said the section was what made it hard to overturn an agreement by a judge. Basically, the law allows someone to enter into an unfair agreement as long as he knew what he was doing. Rep. Lory stated he received a letter from a lady in Western Montana pursuant to this kind of agreement, and she requested an amendment be added stating that when assets are found that are not listed in the agreement, they should be listed as community property. Rep. Lory asked what Mr. Barrett thought of the idea. Mr. Barrett said that first, the seriousness of the non-disclosure would have to be decided and then the judge would have to decide what to do with the property. He felt the bill was better without the amendment.

Rep. Mercer said the letter referred to was asking for us to require that any agreement such as this had to specify the property, and if it was not listed, it should be treated as

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 6, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)		✓	
JOAN MILES (D)	✓		
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

MR Chairman, MR Vice Chairman, members of the committee, for the record, I am Eugene Manley, former Chairman of the Granite County Water Users Association, and Secretary of the Allendale Irrigation Company.

I represent the concerns of the water users in the Flint Creek Basin and what should be the concerns of the water users in the Rock Creek Basin on this bill that attempts to address the problems with and remove from our adjudication the necessity of the so called "volume caps".

I would like to direct your attention to Senate Bill 102, Section 1, paragraph (5) (b), subsection (i). I believe the bill would be more acceptable if subsection (i) read "by flow rate only for direct flow rights such as irrigation rights". (PERIOD)

It was in the Flint Creek basin that the controversy first arose over attempts to quantify irrigation water rights by volume. As DNRC members and the Water Courts are aware, I have been the most vocal opponent. I am well aware of the disastrous long range consequences if we continue in the present direction in our basins. You cannot define ~~a limitation on~~ beneficial use by attempting to generically cap all water rights! This is a simplistic approach to a very, very complex problem. (Our current approach to the adjudication process is analagous to the continuing approach to the farm credit problem).

1. First, I will address the Flint Creek Basin and what we have learned from experience over the past 48 years. The Allendale Irrigation Company once operated with a system of volume caps. The tendency during those years was that water users started "saving water" very early in the Spring when it was plentiful and readily available. Thus, we did not get the maximum early season usage in the upper basin. This heavy early season usage is vital in order to recharge the aquifer which in turn starts an early return flow and stabilizes stream flow later in the year. As a result of the early spring "water saving" practices, we annually developed a logistics problem in that we could not meet the demands for water later in the season. I was finally able to convince the water users to forget the volume caps and promote heavy use during the spring in the upper basin. Benefits from the heavy use were realized almost immediately. Within a very few seasons using this practice, there was a noticable difference in a heavier down stream flow every year and it has continued that way ever since. In 1985, the driest year we have had in the Flint Creek Basin, we still had stable stream flow and were able to fill

EX-100

all rights. Under the system of volume caps, we would have had a dry creek bed!

Lets look at another disturbing aspect of volume caps. On an adjudicated stream such as Flint Creek, rights at some point in the season are going to be prioritized by volume, not by priority date. I want you to think about the legal implications and the amount of litigation we will have at a point in time when a very senior right becomes subrogated to a junior right. Junior rights that in some cases were, in the past, enlarged contrary to law.

One of the things we have never understood in our Basin is that after the controversy over volume caps arose, changes were initiated in response to our concern. Volume caps were raised in other basins in July and August of 1984. Our objection period was ended on September 3, 1984 and on September 6, the Water Court issued the order raising our caps. Many of the attorneys with whom I worked told me that at that point in time, either the objection period should have been reopened or the Temporary Preliminary Decree withdrawn and re-issued. The raising of the volume caps drastically altered what the previous objections might otherwise have been.

In the Flint Creek Basin we have 1035 claims. There were 870 objections of which over 600 were over volume. We have already spent a tremendous amount of money and effort on the volume cap issue. Removal of the volume caps will speed up our adjudication process and eliminate the probability of needless costly litigation. We can adjudicate our irrigation rights on the basis of flow rate alone. *** (see footnote)

2. Rock Creek as you know is a Blue Ribbon Trout Stream. Volume caps on Rock Creek would have a devastating effect. Claimants on this creek have never had water measured. I doubt they can relate to flow rate, let alone volume. When the realization hits them that they have only 10 to 50 percent of the water necessary for crop production, it will be too late to rectify a very serious problem. They and the State of Montana will have lost 50 to 80 percent of their productive capacity. Land without water! A legally defensible right will be superceded by a number of claims that far exceed the flow rate of Rock Creek. Among them, claims by Fish, Wildlife and Parks to over 6800cfs which is the flow rate of Rock Creek at flood stage! None of these claims on Rock Creek were objected to!

Example: Last summer, on one large ranch in the Rock Creek Basin, we were able to work with the owner and set up measuring devices. That ranch, given the current volume caps, would have enough water to last until the first week in June.

In all of this controversy, please remember that the bottom line on every decreed ~~claim~~ now reads, "The volume of this right shall not exceed "X" number of ~~acre~~ feet of water. A rather ~~ominous~~ finality.

Once the adjudication based upon flow rate is in place, and the need should arise in the future, we could have the necessary information documented to make a more judicious decision as to what volumes should be. Bear in mind that Montana is a water creating state and not a water consuming state such as Kansas and Nebraska.

*** Volume caps do not inventory water, rather, they give a very distorted picture of the amount of water that is available in any given basin.

Eugene Manning

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

DATE _____

March 6, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 17, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 17, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 102:

Rep. Cobb moved that SB 102 BE CONCURRED IN. Rep. Cobb moved amendments and explained them. (Exhibit A). He stated this bill will have no effect on in-stream flows and the flow rate and volume will be used only when the judge requires it. The passage of the amendments will stop a lot of the objections on volume in irrigation rights. Rep. Gould asked Rep. Cobb if he has run the amendments pass the sponsor of the bill and he stated that he has. Rep. Eudaily asked Rep. Cobb to explain the fourth amendment. Rep. Cobb pointed out that this amendment has to do with stock ponds and reservoirs that have never been historically measured by flow rate. They have been measured by volume. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Cobb moved that SB 102 BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Mercer questioned the Statement of Intent and Rep. Cobb stated the statement should be left off and changed on the House floor. Rep. Cobb stated the substance of the law is actually in the statute and in the first two amendments. SB 102, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 108:

Rep. Darko moved that SB 108 BE NOT CONCURRED IN. Rep. Miles agreed with the motion and stated they have to go through an election anyway. Rep. Hannah further agreed with the motion. Question was called and a voice vote was taken. The motion CARRIED 10-7. SB 108 BE NOT CONCURRED IN.

ACTION ON SENATE BILL NO. 96:

Rep. Miles moved that SB 96 BE CONCURRED IN. Reps. Mercer and Meyers stated they feel the penalty is quite severe. Rep. Eudaily stated the penalty for subsection (1) is the

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 17, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

MARCH 17.

1937

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 102☐ do pass☐ do not pass

 be concurred in

☐ be not concurred in

as amended

☐ statement of intent attached

Chairman

1. Title, 11-1-77.

12/1/54 10:00 AM

DATE OF SUBMITTING APPLICATION: DATE AND

1990 12 12

10-11-68

3. 0.12 0.12 0.12 0.12 0.12 0.12

[illegible]

A. P. S. 7-20-68

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6. Page 7, Line 5: "when" should be "page 2."

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SECTION. Section 2. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all divorce issued by a water judge under Title 85, Chapter 2, part 2, after April 30, 1961."

Reference: the request, 2007-107.

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REP. KELLER WILL CARRY THE BILL!

AMENDMENTS TO SB 102
(Third Reading)

1. Page 2, line 19
Following: "right,"
Strike: "measured"
~~measured~~
2. Page 2, line 21 through line 22
Following: "rights"
Strike: remainder of line 21 through "rate" on line 22
3. Page 2, line 23
Following: "as"
Insert: "stockpond and"
4. Page 2, line 24
Following: "rights,"
Strike: "that have historically been measured by volume"
Insert: "and for rights that are not susceptible to measurement by flow rate"
5. Page 2, line 25 through line 1, page 3
Following: "that"
Strike: "remainder of line 21 through volume" on line 1, page 3
Insert: "a water judge determines require both volume and flow rate to adequately administer the right"

AMENDMENTS TO SB 102

1. Page 4

Following: line 4

Insert: "NEW SECTION. SECTION 2. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all decrees issued by a water judge subsequent to April 30, 1982, pursuant to Title 85, chapter 2, part 2.

STATEMENT OF INTENT
Senate Bill 102

A
3-17-81
SB - 102

This bill provides that water rights should not be quantified in a temporary preliminary, preliminary or final decree except as historically defined in Montana, or except where a water judge determines that quantification of both volume and flow rate are required to adequately administer the rights. For example, most irrigation water rights have been commonly defined in Montana only by flow rate, reservoir rights have been commonly defined by volume, and hydropower rights have been commonly defined by both flow rate and volume. This bill retains the water court's discretionary powers to quantify water rights in terms of their historic definitions. It is the intent of the legislature that the water judges exercise their discretionary power on all existing and future decrees to reduce, to the extent possible, objections to water rights that have not historically been defined by volume.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 23, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 23, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 121:

Rep. Giacometto moved that SB #121, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED 11-2 with Reps. Cobb and Eudaily dissenting. SB #121 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 139:

Rep. Grady moved that SB #139, Be Concurred In. Rep. Cobb moved the page 3 amendment of the bill. He explained that on page 3, Lines 5-6 and line 13, he is striking "willful or wanton misconduct" and inserting "gross negligence". Rep. Grady questioned Rep. Cobb in regard to this amendment asking him if it lowers the standard. Rep. Cobb pointed out that it is a lower duty and higher responsibility. Rep. Grady asked what the skiers currently have and he stated that responsibility needs to be put on the people. Rep. Giacometto acknowledged that he is against the amendment but pointed out that page two gives the list of everyone working on the trails. Rep. Meyers opposed the amendment. Question was called and a voice vote was taken. The motion CARRIED 8-7. (See Amendment Attached). Mr. McMaster explained that the added language starting on page 5, line 25 and going to page 6, line 9 was brought out by Rep. Mercer at the time of the hearing as being too broad, because it covers all recreational activities, and he said, that since Rep. Mercer is not here at this time, he felt that he should bring it up to the committee. He pointed out that line 2, states "provide recreational opportunities". Rep. Giacometto moved a clean up amendment on page 4, line 22 striking "effective" and inserting "effect of". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendment Attached). Rep. Addy moved an amendment on page 6, line 5, striking "the department,". Question was

JUDICIARY COMMITTEE

March 13, 1987

Page

ACTION ON SENATE BILL NO. 223:

Rep. Bulger moved that SB #223, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #223, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 226:

Rep. Strizich moved that SB #226, Be Concurred In. Rep. Mercer moved an amendment on page 3, line 22, inserting the language "youth and the" following "ability of the". Question was called and a voice vote was taken. The motion CARRIED UNANIMOUSLY. (See Amendment Attached). Rep. Strizich moved that SB #226, Be Concurred In As Amended. Question was called and voice vote was taken. The motion CARRIED unanimously. SB #226, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 241:

Rep. Bulger moved that SB #241, Be Concurred In. Rep. Bulger moved amendments. Discussion followed with Rep. Mercer supporting the amendments. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Giacometto dissenting. (See Amendments Attached). Rep. Bulger moved that SB #241 Be Concurred In As Amended. Mr. MacMaster stated that there are some clean up amendments on page 6, line 24. Rep. Mercer moved to clean up amendments. The motion CARRIED unanimously. Question was called on the bill and a voice vote was taken. The motion CARRIED 14-1 with Rep. Brown dissenting. SB #241, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 229:

Rep. Rapp-Svrcek moved that SB #229, Be Concurred In. Rep. Miles opposed the motion stating that she opposes because she is not sure what function the court will be able to serve. Rep. Rapp-Svrcek pointed out that the people who can afford an attorney to take the case into the court, the judge can then place them ahead of people on the waiting lists. He stated that it is an equitable situation and this bill would prevent that from happening. Rep. Bulger stated that the attorney from the Board of Visitors opposed this bill. Question was called and a voice vote was taken. The motion FAILED 6-7. Rep. Miles moved to table the bill. A voice vote was taken and the motion CARRIED 10-5. SB #229, TABLED.

ACTION ON SENATE BILL NO. 102:

Rep. Cobb moved that the Statement of Intent Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously.

ACTION ON SENATE BILL NO. 258:

Rep. Giacometto moved that SB #258, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #258, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 289:

Rep. Gould moved that SB #289, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #289, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 361:

Rep. Strizich moved that SB #361, Be Concurred In. Rep. Eudaily moved amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Strizich moved that SB #361, Be Concurred In As Amended. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #361, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 160:

Rep. Mercer moved that SB #160, Be Concurred In. Rep. Mercer moved an amendment on page 2, lines 6 and 9. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Mercer moved that SB #160, Be Concurred In As Amended. Question was called and a voice vote was taken. The motion CARRIED 14-1, with Rep. Daily dissenting. SB #160, BE CONCURRED IN AS AMENDED.

ADJOURNMENT: There being no further business before the Committee, the meeting was adjourned at 10:00 a.m.

Rep. Earl Lory, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 23, 1987

| NAME | PRESENT | ABSENT | EXCUSED |
|----------------------|---------|--------|---------|
| JOHN MERCER (R) | ✓ | | |
| LEO GIACOMETTO (R) | ✓ | | |
| BUDD GOULD (R) | ✓ | | |
| AL MEYERS (R) | ✓ | | |
| JOHN COBB (R) | ✓ | | |
| ED GRADY (R) | ✓ | | |
| PAUL RAPP-SVRCEK (D) | ✓ | | |
| VERNON KELLER (R) | ✓ | | |
| RALPH EUDAILY (R) | ✓ | | |
| TOM BULGER (D) | ✓ | | |
| JOAN MILES (D) | ✓ | | |
| FRITZ DAILY (D) | ✓ | | |
| TOM HANNAH (R) | ✓ | | |
| BILL STRIZICH (D) | ✓ | | |
| PAULA DARKO (D) | ✓ | | |
| KELLY ADDY (D) | ✓ | | |
| DAVE BROWN (D) | ✓ | | |
| EARL LORY (R) | ✓ | | |
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STANDING COMMITTEE REPORT

MARCH 23,

37
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JUDICIARY

Mr. Speaker: We, the committee on

SENATE BILL NO. 192

report.

☐ do pass

☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☒ statement of intent attached

Chairman

STATEMENT OF INTENT
SENATE BILL NO. 102

The legislature intends that water rights should not be quantified in a temporary preliminary, preliminary, or final decree except as historically defined in Montana and except where a water judge determines that quantification of both volume and flow rate are required to adequately administer the right. For example, most irrigation water rights have been defined in Montana only by flow rate, reservoir rights have been commonly defined by volume, and hydropower rights have been defined by both flow rate and volume. The courts retain discretionary power to quantify water rights in terms of their historic definitions. It is the intent of the legislature that the water judges exercise their discretionary power on all existing and future decrees to reduce, to the extent possible, objections to water rights that have not historically been defined by volume.

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